

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 RHONDA ROE (a pseudonym),)
5 individually and on behalf)
6 of all others similarly)
7 situated,)

8 Plaintiff,)

9 vs.)

No. 1:21-cv-00305

10 SURGICAL CARE AFFILIATES,)
11 LLC; SCAI HOLDINGS, LLC;)
12 UNITED HEALTHGROUP, INC.;)
13 and JOHN DOES 1-10,)

14 Defendants.)

15 SCOTT KEECH,)

16 Plaintiff,)

17 vs.)

1:21-cv-0741

18 SURGICAL CARE AFFILIATES,)
19 LLC; SCAI HOLDINGS, LLC;)
20 COMPANY A (A JOHN DOE)
21 DEFENDANT); and COMPANY B)
22 (A JOHN DOE DEFENDANT),)

23 Defendants.)

Chicago, Illinois
May 17, 2021
10:02 a.m.

24 TRANSCRIPT OF PROCEEDINGS - TELEPHONIC STATUS HEARING

25 BEFORE THE HONORABLE ANDREA R. WOOD

APPEARANCES:

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Rhonda Roe:

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1 (Proceedings held remotely, via telephone:)

2 THE COURT: Good morning. This is Judge Wood. I
3 think we're ready to get started, so I will have my courtroom
4 deputy call the case, and then we will go around and get
5 appearances. We'll call both of the cases, and we'll start
6 with plaintiffs' counsel when we get appearances.

7 David.

8 THE CLERK: 21 CV 305, Roe versus Surgical Care
9 Affiliates, LLC; and 21 CV 741, Keech versus Surgical Care
10 Affiliates, LLC, et al., for status.

11 THE COURT: Let's start with the 21-305 plaintiffs'
12 counsel.

13 MS. SCHARF: Thank you. Good morning, your Honor.
14 This is Stephanie Scharf on behalf of plaintiff Roe.

15 MS. NUSSBAUM: Good morning, your Honor. This is
16 Linda Nussbaum on behalf of plaintiff Roe.

17 MR. ROBERTS: Good morning, your Honor. This is
18 Michael Roberts on behalf of plaintiff Roe.

19 THE COURT: Okay. Is that all the plaintiffs'
20 counsel we have in the 305 case?

21 Let's go ahead now and actually get appearances for
22 plaintiffs' counsel in the 741 case.

23 MR. HARVEY: Good morning, your Honor. This is
24 Dean Harvey of Lieff, Cabraser, Heimann & Bernstein for
25 plaintiff Keech.

1 THE COURT: Okay. Is there anybody else on behalf of
2 plaintiff Keech on the line?

3 MR. WILLIAMS: Good morning, your Honor. My name is
4 Steve Williams. I do not represent plaintiff Keech; I
5 represent the Spradling plaintiffs in the case that is subject
6 to the motion to be related to the other two cases that is
7 Case Number 1324.

8 THE COURT: Yes, you anticipated my next question
9 which was going to be to see if you were on the line. Thank
10 you.

11 Do we have any other counsel on the line representing
12 plaintiffs in any of the related cases?

13 MS. SCHARF: Yes, your Honor. This is
14 Stephanie Scharf. I also represent plaintiff Smith.

15 THE COURT: Anyone else who needs to make an
16 appearance on behalf of the plaintiffs' side in any of the
17 cases?

18 Okay. Then let's move to defense counsel.

19 MR. LAYTIN: Good morning, Judge. Dan Laytin of
20 Kirkland & Ellis for the SCA defendants.

21 THE COURT: Do we have any other defense counsel on
22 the line? It sounds like Mr. Laytin is by himself this
23 morning. Any other parties who need to make a formal
24 appearance as part of the record this morning?

25 MR. MARIANO: Good morning, your Honor. This is

1 Anthony Mariano for the United States.

2 THE COURT: Thank you, Mr. Mariano.

3 Anyone else? It appears that is everyone.

4 This is one of the circumstance where sometimes it's
5 easier to have in-person status hearings where we can see
6 everybody who is lined up and know that everybody has made an
7 appearance.

8 Okay. So I wanted to sort of dispose of as many of
9 the pending motions to set the case on the right procedural
10 track as possible this morning. Before I go through and do
11 that, I'd actually like to get an update on the status of the
12 criminal case that's pending in Texas.

13 I think the last time I glanced at the docket there,
14 it appeared that the anticipated motion to dismiss the
15 indictment is now fully briefed, and it would appear that
16 things are still on track for a November trial date. But
17 perhaps whichever counsel is most familiar with that matter
18 can give me an update on the progress there.

19 MR. LAYTIN: Happy to start. Your Honor, it's
20 Dan Laytin.

21 That's right. I think on Friday, we filed the reply
22 brief for the motion to dismiss, and that is now fully
23 briefed. And I don't think there's been any other change to
24 the overall court schedule in the criminal matter.

25 THE COURT: Is there a date for a scheduled oral

1 argument or a ruling date that you're aware of with respect to
2 the motion to dismiss?

3 MR. LAYTIN: I'm not, Your Honor.

4 THE COURT: Does any other party desire to weigh in
5 on that topic?

6 MR. MARIANO: Yes, Your Honor. This is
7 Anthony Mariano.

8 Counsel is correct. I'll just add I don't want to
9 foreclose the possibility that the United States might seek to
10 file a sur-reply on the motion to dismiss. The reply by the
11 defendants was just filed on Friday, but beyond that, it has
12 been briefed as reflected.

13 THE COURT: With respect to the matter that is
14 pending here, following up on the conversation that I had with
15 all the parties at the last hearing, I've gone back through
16 and looked at all the filings. I think it's appropriate to:
17 One, grant the motion to reassign that is outstanding -- or I
18 guess there are two, technically, one for the Smith case and
19 one for the Spradling case -- and to also grant the request to
20 consolidate the cases, to appoint the interim co-lead and
21 liaison counsel, and then to also go ahead and set a timeline
22 for the filing of a consolidated amended complaint.

23 So I believe the parties, shortly before the last
24 hearing we had, had submitted an updated motion for
25 consolidation setting out some procedures and reflecting the

1 current state of the case. I don't know that anything has
2 changed that would require that order to be updated.

3 Based on my review of it and review of the docket, it
4 wouldn't appear that there would be a need for any further
5 updated order, so my intent would be to grant the motions and
6 enter substantially the order that was proposed by the parties
7 at the end of March and then proceed with the setting of a
8 date for the filing of a consolidated amended complaint.

9 I know the government's position has been that this
10 case or the related cases here should be stayed pending the
11 resolution of the criminal case. I take it that that is still
12 the government's position, Mr. Mariano?

13 MR. MARIANO: Yes, your Honor.

14 THE COURT: I take it that is still a position that
15 the defendants support and that the plaintiffs oppose,
16 Mr. Laytin?

17 MR. LAYTIN: Yes, for defendants.

18 THE COURT: And for plaintiffs' counsel?

19 MR. WILLIAMS: Yes. Thank you, Your Honor. Steve
20 Williams for the plaintiffs.

21 We still maintain that there are several areas that
22 we could proceed on consistent with Rule 1 that would pose no
23 actual or potential interference with any of the criminal
24 proceedings.

25 THE COURT: So at this point, here's what I'm going

1 to propose will go forward. As I indicated, the filing of the
2 consolidated amended complaint, there seems to be no reason
3 why plaintiffs should not proceed with that.

4 It also seems to me that it would be appropriate to
5 proceed with a briefing schedule on what I understand to be
6 the anticipated motion to dismiss. If there is just an answer
7 filed, I suppose that might take things in a different
8 direction, but in considering what would be most efficient
9 here and given the fact that the motion to dismiss the
10 indictment which may involve some overlapping issues but I
11 don't think would be squarely on all fours in any case is ripe
12 for ruling, notwithstanding the fact that the government may
13 seek to file a sur-reply.

14 I don't perceive any real conflict there. It
15 certainly doesn't pose any conflict with respect to potential
16 discovery or allowing one side or the other, particularly in
17 connection with the criminal case, to gain an advantage that's
18 not contemplated.

19 So I'm going to, consistent with the stipulated order
20 that was entered, set a briefing schedule that will allow the
21 filing of the consolidated amended complaint to be followed
22 with an answer or other response 45 days later.

23 If there's a motion to dismiss, the briefing schedule
24 will follow as previously agreed with the plaintiffs'
25 opposition due 45 days thereafter and the defendant's reply

1 due 30 days thereafter.

2 Other than discovery steps designed to preserve
3 evidence and kind of generally make sure that there's no
4 prejudice associated with the delay, discovery would otherwise
5 be stayed here in light of the pending case in Texas. So what
6 that would mean, I think, is certainly there's no reason why
7 the parties couldn't negotiate and seek the entry of a
8 confidentiality order here.

9 If there are specific document production -- or I'm
10 sorry -- document preservation or evidence preservation
11 issues, perhaps things that are not just within the scope of
12 the criminal case that parties are concerned will not be
13 preserved, what I would contemplate is the parties being able
14 to issue third-party subpoenas for the limited purpose of
15 preserving that evidence with respect to third parties or
16 serving early Rule 34 requests for the purpose of preserving
17 or putting the other side on notice of what would need to be
18 preserved.

19 Otherwise, it seems to me, with the trial on track
20 for the fall and with what I would expect to be fairly
21 involved briefing on any motion to dismiss that was filed
22 here, it seems appropriate to put any further discovery on
23 hold, anticipating that the trial will go forward as scheduled
24 and be completed before the end of the year.

25 I know, seeing how things have been progressing in

1 our district with respect to resuming jury trials, that things
2 seem to be moving forward and not backwards. My expectation
3 is that COVID should not be an impediment to that case heading
4 forward towards trial as scheduled.

5 So that's kind of my proposal for the orders that I
6 was intending to enter after today. I know some portions of
7 that parties may disagree with, but let me give you a chance
8 to bring to my attention any new development or issue that you
9 think I've overlooked that might sway me to alter that plan,
10 starting with the plaintiffs' side of things.

11 MR. WILLIAMS: Thank you, your Honor. This is
12 Steve Williams for the plaintiffs. We appreciate the thought
13 and consideration you've given to this.

14 I would suggest we would agree to everything you said
15 as being the correct course, and perhaps the only suggestion I
16 would make would be that negotiation of an ESI protocol or
17 document might make sense now and a Rule 26 conference as
18 well, subject to the appropriate limitations you discussed,
19 meaning to make sure preservation issues are appropriate.

20 It seems that that might be a productive way to go
21 forward, too, but I do think that what you've suggested while
22 we go through motion-to-dismiss practice seems like a good
23 approach to balance the parties' and the government's
24 concerns.

25 THE COURT: What does the defense think about the

1 idea of negotiating an ESI protocol? Is there already
2 something in place with respect to preserving ESI?

3 MR. LAYTIN: Dan Laytin.

4 So, first, we don't have an objection to negotiating
5 an ESI protocol. That's a friendly amendment by Mr. Williams.

6 And with respect to the Rule 26 conference, I think
7 that we've had a Rule 26 conference with the first two cases,
8 and we can absolutely fold one in with Mr. Williams' case, the
9 Spradling case, so I think that is all fine with SCA.

10 With respect to the document preservation issues,
11 having preservation subpoenas and Rule 34 requests for
12 production that go out to determine whether there's any space
13 in the Venn diagram that needs to be discussed from a
14 preservation perspective is fine with us, too.

15 THE COURT: Mr. Mariano, I know the government had
16 originally requested that proceedings here be stayed in their
17 entirety. Is there any ongoing concern that even briefing of
18 a motion to dismiss would interfere in some way with the
19 criminal case?

20 MR. MARIANO: We've articulated in our briefing why
21 we were seeking a stay on that as well, but I think those
22 issues have been fully presented to the Court, and we
23 understand the Court's ruling on that. There's nothing
24 additional.

25 THE COURT: Okay. And certainly if something should

1 change either with the timetable in Texas or any other
2 material change in the status quo, including a ruling on the
3 motion to dismiss the indictment, my hope is that the parties
4 would bring that to my attention. And you could certainly
5 seek relief if you think that it requires an alteration of the
6 plan in the civil proceedings.

7 Let's see here. Mr. Williams, how much time
8 following the entry of the order consolidating the action will
9 the plaintiffs need in order to prepare the consolidated
10 amended complaint?

11 MR. WILLIAMS: Your Honor, I may ask at this point
12 one of my co-counsel to discuss, but I do know that we have
13 been working, and we will be prepared to move soon. I think
14 someone else is closer to that, though. Thank you.

15 MR. HARVEY: This is Dean Harvey of Lieff, Cabraser,
16 Heimann & Bernstein on behalf of plaintiff Keech.

17 Yes, in the stipulated proposed order that Your Honor
18 referenced, it provided us with 30 days from the entry of that
19 order to file our consolidated amended complaint, and we could
20 absolutely meet that deadline.

21 THE COURT: Okay. So we'll stick with a 30-day
22 timeline from the entry of that order. As I said, the
23 briefing schedule on any motion to dismiss would follow the
24 stipulation as well.

25 Mr. Laytin, do you still expect that there will be a

1 motion to dismiss?

2 MR. LAYTIN: I do, Your Honor.

3 THE COURT: Good. Then I think we have a plan going
4 forward.

5 I'm going to ask the parties also, as part of this
6 order, to provide notice to the Court within three business
7 days of any ruling on the motion to dismiss the indictment in
8 the criminal case which could have an impact both with respect
9 to the schedule and the procedure of the civil proceedings as
10 well as, I imagine, the parties wanting to incorporate
11 whatever that ruling is into the briefing. So I'd like to
12 make sure that I get notice of when that occurs. And that can
13 simply be a notice document with a ruling attached.

14 MR. LAYTIN: That's fine, Your Honor. I expect that
15 one or the other side will be eager to tell you.

16 THE COURT: I imagine that that will be the case.

17 Okay. Looking ahead at the schedule, I'm going to
18 ask my deputy for assistance with the calendar here. So
19 David, if we have a 30-day complaint date followed by 45, 45,
20 and 30, where does that put us at the conclusion of the
21 briefing of a motion to dismiss?

22 THE CLERK: One moment, Judge. Judge, that would put
23 us at September 14th.

24 THE COURT: Okay. And that's assuming that the order
25 gets entered today. It will probably be another 24 hours, so

1 we're looking at towards the end of September. I don't want
2 to go that long without having some sort of status date from
3 the parties, so I think what I'm going to do is to set just a
4 60-day date from today for a status report, a written status
5 report. So that will be July 19th.

6 And the status report will fall, most likely, in the
7 midst of briefing, but here's what I would like it to include.
8 It should include: One, a status of the briefing of any
9 motion to dismiss just as a reminder of where those things
10 stand.

11 I would like by that date for the parties to have
12 submitted what hopefully will be agreed confidentiality and
13 ESI protocol orders. So my preference with respect to those
14 documents is that to the extent possible, there be an agreed
15 order for entry of the ESI protocol and a confidentiality
16 order even if the parties disagree on a couple of provisions.

17 If you're in agreement that there should be an order,
18 then you can still call it an agreed motion and simply
19 indicate in the motion what your areas of disagreement are.
20 And that way, we can either set a hearing to work them out, or
21 if it's just a clear choice between two different approaches,
22 I can make that ruling.

23 So that would be a 60-day time period for the parties
24 to meet and confer regarding an ESI protocol and a
25 confidentiality order. Does that seem like a reasonable

1 amount of time with the other things that the parties will
2 have on their plates?

3 MR. WILLIAMS: Your Honor, Steve Williams for the
4 plaintiffs.

5 I think given that counsel on both sides have done
6 these often, it should be pretty straightforward. I think we
7 can meet that date.

8 MR. LAYTIN: And yes, we can, for defendants.

9 THE COURT: Good. So the due date for those proposed
10 orders will also be July 19th. So you can just indicate in
11 your status report that they've been filed. Obviously, you
12 can submit it earlier if you're prepared earlier. If for some
13 reason the time frame slips, you can indicate in the status
14 report the reason for that.

15 If any party desires to have some specific discovery
16 carved out of the stay to go forward for any reason, you may
17 indicate that in the status report as well. Otherwise, the
18 only other thing I would ask for at this point would likely be
19 any disputes or issues that the parties are aware of that you
20 expect would require a status hearing prior to the resolution
21 of the motion to dismiss.

22 So those are the items that would go into the status
23 report on the 19th. Once I see where things are and we're a
24 little further into the briefing, I will set a telephonic
25 status hearing date probably for a little bit later in the

1 fall, perhaps shortly after the motion to dismiss is fully
2 ruled upon, just to make sure that there's no issue on which
3 I'd like to have any argument at this point. I wouldn't
4 expect to.

5 I'm pretty confident that the briefing will be
6 fulsome and robust, but just in case there are any specific
7 issues that I have for the parties, I may set a status hearing
8 for shortly after the briefing to make sure that that's
9 addressed. I'll try to do that, if I do, in advance of --
10 well in advance of the trial so that doesn't interfere with
11 anybody's trial preparations down in Texas.

12 What other issues would the parties like to raise
13 today? I'll start with the plaintiffs' side.

14 MR. ROBERTS: This is Michael Roberts.

15 I apologize. I may not have heard clearly what your
16 expectations are.

17 If the parties have disagreement and can't come to
18 full agreement on the ESI and confidentiality orders, do you
19 want those two different views expressed in the status report,
20 or do you want them in the proposed orders?

21 THE COURT: So I would like them in a separate moving
22 document. So for the proposed orders, I would hope to have a
23 single moving document and agreed motion for entry of an ESI
24 protocol and confidentiality order.

25 I'd like one document that sets forth the competing

1 positions. If it's a particular paragraph of your proposed
2 order that you can't agree on, if there's something
3 conceptually, I'd like the parties to make your best effort to
4 set out your competing positions in a single document,
5 preferably within our 15-page limit.

6 You should also submit Word versions of any competing
7 proposed orders to the proposed order email box.

8 So the idea is in putting together your single
9 document that sets forth your areas of disagreement, it
10 assures me that you've actually discussed them with each other
11 in attempt to narrow those areas of disagreement, and it
12 avoids prolonged briefing back and forth.

13 So that once you've made your submission, hopefully,
14 I'll have the information I need, or if I don't, as I said, we
15 can set a motion hearing and talk through the issues.

16 Does that answer your question, Mr. Roberts?

17 MR. ROBERTS: Yes, your Honor. Thank you very much.

18 THE COURT: Any other issues from the plaintiffs'
19 side?

20 MS. SCHARF: No, your Honor, nothing else from the
21 plaintiffs.

22 THE COURT: Okay. And from the defense, any other
23 issues you'd like to raise?

24 MR. LAYTIN: No, your Honor. For SCA, zero.

25 THE COURT: Good. So then I'll look forward to

1 getting a status report on July 19th as well as a consolidated
2 amended complaint that will be due 30 days after entry of the
3 consolidation order. Thank you for your time this morning,
4 Counsel.

5 (Proceedings adjourned at 10:28 a.m.)

6 C E R T I F I C A T E

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8
9 I, Brenda S. Tannehill, certify that the foregoing is
10 a complete, true, and accurate transcript from the record of
11 proceedings on May 17, 2021, before the HON. ANDREA R. WOOD in
12 the above-entitled matter.

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14
15 /s/Brenda S. Tannehill, CSR, RPR, CRR

May 24, 2021

16 Official Court Reporter
17 United States District Court
18 Northern District of Illinois
19 Eastern Division

Date